

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**LETTERS PATENT APPEAL No. 163 of 2005
In
SPECIAL CIVIL APPLICATION No. 7572 of 1988**

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE M.C.PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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**ANANDIBEN CHANDULAL SHAH - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)**

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Appearance :

MR SK JHAVERI for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5
None for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL**

Date : 01/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

1. Present appellants are the legal heirs of deceased Chandulal Keshavlal Shah - original petitioner, whose

petition was partly dismissed by Miss. R.M.Doshit,J. by her order dated 4.10.2004, which is challenged in this appeal.

2. Learned Counsel Shri Jhaveri firstly submitted that the learned Single Judge committed grave error in not granting prayer for reimbursement of the medical expenses incurred by the original petitioner in foreign country. In support of his submission, Shri Jhaveri has pointed out the copy of the Resolution dated 20.2.1979 passed by the Board of Directors of the respondent (Annexure-C Collectively), wherein it is stated that he would be entitled for free medical facilities for self and family. He submitted that the respondent No.2 - GMDC could not have altered his service conditions by subsequent Circular dated 28.1.1980 (Annexure-F). He also submitted that the averments made by him in Para.11 of his writ petition that Dr.S.C.Munshi of Jashlok Hospital, Bombay recommended him to undergo artiriography followed by heart by-pass surgery under Dr.Denton Cooly of St.Lukes Episcopal Hospital, Houston, Texas, USA, where success rate of such operation procedure was more than 90%, remained uncontroverted by the respondent No.2 in his affidavit. In that view of the matter, learned Single

Judge should have granted prayer for reimbursement of medical expenses incurred by him in USA. In support of this submission, Shri Jhaveri has placed reliance on the judgment of this Court in the case of Madhavdas Bhagwandas Khushiramani Vs. State of Gujarat and Others, reported in 2000 (2) GCD 871 (Para.8). There is no substance in it.

2.1 It is true that in the Resolution dated 20.2.1979 (Annexure-C Collectively, at Page-43), it is mentioned that free medical facilities would be provided to the petitioner as well as his family. But, nowhere it was stated that free medical facilities would be provided to the petitioner or his family in foreign country. The respondent No.2 - GMDC is a public undertaking. It is bound by the circulars issued by the State Government. As per the circular dated 28.1.1980 issued by the State Government (Annexure-F), the medical expenses of foreign country incurred by the employees of public sectors and his family members are not be reimbursed. It can be reimbursed only if the employee had gone to foreign country in discharge of his duty and at that time, if he has fallen sick and taken medical treatment, then only, such expenses should be reimbursed, otherwise not. By way

of an exception, it was also provided in the said circular that if medical treatment is not available in India, then only, the question of reimbursement of medical expenses incurred by the employee of the public sectors in foreign country can be considered provided prior sanction was obtained for it. By no stretch of imagination, it can be said that by issuing such circular the service conditions of the original petitioner have been materially changed. In the case of State of Punjab and Others Vs. Ram Lubhaya Bagga and Others, reported in 1998 (4) SCC 117, the Hon'ble Supreme Court has held that the right of the State Government to change its policy from time to time, under the changing circumstances, could not be challenged as no State of any country can have unlimited resources to spend on any of its projects.

2.2 Merely because the averments made by the original petitioner in Para.11 of his petition that he was recommended by Dr.S.C.Munshi of Jashlok Hospital, Bombay to undergo arteriography followed by heart by-pass surgery in USA remained controverted by the respondent No.2 in the reply affidavit, that would not be a ground for the petitioner to claim the reimbursement of medical expenses incurred by him while taking treatment in USA,

as there is nothing on record to show that Dr.S.C.Munshi of Jashlok Hospital,Bombay made such recommendation. In any case, as stated earlier, in absence of any provisions that the petitioner would not be entitled for reimbursement of medical expenses incurred by him in foreign country. It cannot be said that the learned Single Judge committed an error in rejecting the claim of the petitioner on the ground that such treatment was easily available in any part of India, when Circular of 1980 making it more than clear that person would not be entitled for reimbursement of medical expenses incurred by him in foreign country.

2.3 Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of Grid Corporation of Orissa and Others Vs. Rasananda Das, reported in AIR 2003 SC 4599, by learned Counsel Shri Jhaveri. It was a case of pay scale of absorbed employees. We fail to understand that how it is applicable on facts of this case.

2.4 Shri Jhaveri then submitted that in any case, Rs.22,000/- should have been reimbursed towards medical expenses. This submission was not urged before the

learned Single Judge in the writ petition, therefore, we would not like to go in to this disputed question of fact in this Appeal for the first time.

3. Shri Jhaveri then submitted that the learned Single Judge committed grave error in not considering his challenge to the termination order dated 9.2.1973 (Annexure-A) on the ground that he had initially given up his challenge and the prayer clause-23(A) of the petition was deleted, because prayer clause-23(C) was very much there and the same was not deleted. We are really surprised with such arguments. It appears that the writ petition of the original petitioner was filed at a belated stage, with so many prayers including the challenge to the termination order of 1973. It is clear that only because the original petitioner had given up his challenge to the termination order of 1973, prayer clause-23(A) was deleted at the time of admission, and, thereafter, his petition was entertained for other reliefs. Except the relief of reimbursement of his medical expenses and challenge to the order dated 9.2.1973, other reliefs have been granted by the learned Single Judge. Therefore, now in this appeal we would not permit to challenge his termination order of 1973. In

fact, it was not open to the appellant to challenge it in appeal after giving up his challenge before the learned Single Judge.

3.1 In any case, we are in complete agreement with the reasons assigned by the learned Single Judge in coming to the conclusion that there was a belated challenge to the impugned order of termination dated 9.2.1973 by the original petitioner, therefore, it cannot be entertained.

4. Except the aforesaid submissions, no other submission was made. Accordingly, this appeal fails and is hereby summarily dismissed.

(B.J.Shethna, J.)

(M.C.Patel, J.)

(vipul)